The motion was put and carried, 29 voting *for* and 3 *against*. The grant was made.

PRESIDENT: Gentlemen, I shall now request the Deputy President to take the chair.

The Deputy President, in taking the Chair amidst loud cheers, said: "Let me thank you most sincerely for the kind welcome that you have now accorded to me. This is the first occasion given to me to take the Chair as Deputy President. It was not without considerable misgivings that I accepted this office when it was first offered to me; but, even then, I felt I could count upon the moral support of my friends on both sides of the House in discharging my duty, and I have no doubt that the welcome with which you have encouraged me at the outset of my life as Deputy President will be a constant factor throughout the period when I shall have the honour of continuing as such. With these words I take the Chair."

THE LAND ACQUISITION REGULATION AMENDMENT BILL.

MR. V. SUBBA AIYAR: Sir, I beg to present the Report of the Select Committee on the Land Acquisition Regulation Amendment Bill. The Select Committee has not made any modification in the original Bill and has not thought it necessary to do so. I, therefore, beg to move that the Bill, as revised by the Select Committee, be taken into consideration now.

MR. K. GEORGE: I second it.

DEPUTY PRESIDENT: The question is that the Bill as amended by the Select Committee be taken into consideration. I take it that the House agrees to the proposition.

MR. V. SUBBA AIYAR: I do not think that there is notice of any amendment to the Bill and I believe we may therefore take it that the Bill is accepted by the Council without any modification.

DEPUTY PRESIDENT: I take it that the House agrees to the Bill being accepted without any modification, especially as I find that no amendment has been sent up.

The motion was agreed to.

THE TOLLS RECOVERY REGULATION AMENDMENT BILL.

MR. V. SUBBA AIYAR: Sir, I beg to present the Report of the Select Committee on the Tolls Recovery Regulation Amendment Bill and I beg to move that the same be taken into consideration now.

MR. R. KRISHNA PILLAI: I second it.

MR. V. SUBBA AIYAR: I think that Mr. P. K. Narayana Pillai has got an amendment.

DEPUTY PRESIDENT: Mr. P. K. Narayana Pillai, you may move your amendment.

MR. P. K. NARAYANA PILLAI: Sir, I beg to move the following amendment to the Tolls Recovery Regulation Amendment Bill, as revised by the Select Committee:

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[Mr. P. K. Narayana Pillai.]

Omit "and costs of prosecution" in Section 5-A and recast the rest as follows:

"Whoever being bound to pay any toll in respect of any animal or carriage being taken or conducted by him, refuse to pay the toll demanded of him and wilfully passes or proceeds beyond the tollgate orestation at which such demand is made, shall be liable on conviction before a Magistrate to a fine not exceeding rupees fifty and shall also pay the amount of the toll:

Provided the establishment of such tollgate or station has been previously notified in Our Government Gazette."

The Tolls Recovery Regulation, *i. e.*, Regulation IV of 1088, is cast in the mould of the Imperial Tolls Act, VIII of 1851, amended by Act XV of 1864 and further amended by Act VIII of 1888. The additional clause which is now proposed by the learned Law Member to be incorporated in the Tolls Recovery Regulation of our Statute Book has no corresponding Section in the Imperial Acts. That is to say, if a person wilfully evades the payment of toll at any tollgate or station in British India, he is not liable to be prosecuted under the Tolls Act. By introducing the proposed additional clause the learned Law Member thought that His Highness' subjects required a further curb in the shape of a prospective prosecution to make them realise the importance of the tollgate keeper und evidently, therefore, our learned Law Member has gone one better than the legislators on the other side of the Ghats. This consideration practically tempted me to go back upon the principle on which the present amendment has been put in by the learned Law Member. But, since our acquiescence in the principle upon which this amendment has been suggested by him is too recent, I thought I should not raise a revolt so early against the principle itself. All the same, an additional clause which goes to amend the Regulation and to impose a penalty requires very careful scrutiny. In the first place, granting that a prosecution might be allowed by our statute, I would raise the following questions, by way of amendment.

My amendment is of a three-fold character. First, I press that there must be certain omissions in the proposed clauses. Then, I submit that there must be certain additions by way of safeguard to be imported into the olause, and, thirdly, I maintain that there must be a recasting of the Section in view of the infelicitous language and ambiguities lurking in the proposed clause.

Now I take up first the question of the omission to be made in the clause and that relates to the 'costs of prosecution.' The clause, as now amended by the Select Committee, reads as follows:

"*Section 5 A.* If any person shall, with any carriage or animal, go off or pass any tollgate or station at which tolls are authorised to be collected with intent to evade the payment of any toll, such person shall be liable to a fine not exceeding fifty rupees and shall also pay the amount of the toll and costs of prosecution."

Now, this provision with respect to the costs of prosecution in a criminal case is a novel one in this clause. We have got various special laws imposing penalties; but in none of them, and, so far as I am

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able to recollect, in no enactment on criminal law, can we find the provision for the payment of costs, if the prosecution succeeds. That is the first objection.

Secondly, this provision with respect to the question of payment of costs when it comes to actual and practical working may be found to be a variable and indeterminable factor; for, it is left to the option of the prosecutor to engage any 'big gun', or to import any foreign advocate, especially in view of the growing consciousness among litigants in the superior effectiveness of foreign advocacy in Travancore courts, and ask the opposite party to bear the entire cost of such engagements, so much so that I say that the cost of prosecution is indeterminable and is liable to variations.

DEPUTY PRESIDENT: I suppose it will be controlled by the Vakils' Regulation.

MR. P. K. NARAYANA PILLAI: There are no rules under the Vakils' Regulation for criminal cases. My submission is that it is a variable thing as well as an indeterminable thing.

Thirdly, I beg to point out that the particular provision for the payment of the costs of a prosecution contemplated under this clause does not work both ways. It is one-sided. Certainly the Legislative Council cannot take it as an assumed fact that all prosecutions will succeed under this Regulation. There may be cases in which the accused person may come out victorious. There is nothing provided for the cost of the accused person when he is successful. The usual reciprocity and mutuality of a law of this description is absent in this particular provision.

Fourthly, I see that, after all, the toll to be collected is about as. 8 or so, or say, a rupee and a half, which is the maximum amount that I have come across, *viz.*, the one at Adur.

MR. DOMINIC TOMMAN: Rupees 2½ for lorries.

MR. P. K. NARAYANA PILLAI: I thank Mr. Tomman. For the purpose of realising, say, Rs. 2½, we have got, first of all, the odium of a prosecution, the ignominy which a person would be subject to by the probable conviction, and then the possibility of a fine of Rs. 50, the realisation of the toll under this clause and probably under other clauses also of the same Regulation, and, in addition to all these, the possibility of paying a few hundreds or thousands of rupees by way of costs to the victorious side. This, I beg to submit, is out of all proportion to the mischief to be prevented. So on these four grounds I urge that this provision with respect to the payment of costs of prosecution should certainly be dropped.

The next head of my objection—

DEPUTY PRESIDENT: I think we may reserve that. Let us take your first proposition for deleting "costs of prosecution".

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[Mr. V. Subba Aiyar.]

Mr. P. K. NARAYANA PILLAI: I have no objection.

Mr. J. JOHN NIDIRY: I am entirely at one with my learned friend, Mr. P. K. Narayana Pillai, that the provision in the Bill for the granting of the costs of prosecution is quite unnecessary and uncalled for. It is a well-known thing that, even in civil cases for damages for malicious prosecution, the civil courts are very averse to the award of the costs of such prosecution. Such being the case, is it not a very hard thing that costs also should be provided by the accused for such trivial offences?

Further, I am one of those who think that the collections of tolls and other such petty cesses are quite unsuited to the requirements of our country and the traditions of the State. I would even go the extent of desiring the repeal of the Regulations imposing petty cesses.

DEPUTY PRESIDENT: I do not think, Mr. Nidiry, you are in order in raising that question.

Mr. G. JOHN NIDIRY: In raising that question my only object was to show that I belong to that school of thought. Therefore I am all the more against innovations of the kind in the Bill under consideration. It was only to point out that aspect that I said this. I therefore fully support the view taken up by my learned friend, Mr. P. K. Narayana Pillai, that the provision for the award of costs of prosecution should be taken away from the Bill.

Mr. V. SUBBA AIYAR: Sir, I do not think I am so unreasonable as Mr. P. K. Narayana Pillai would represent me to be. It may be due to the fact that no one will ordinarily admit that he is unreasonable. I said when I introduced the Bill that this provision has been taken bodily from the Municipal Regulation, which has been in force in this country for a very long time, and I submit that there are 19 Municipal Councils and the provision is applicable to all of them. We have not heard as yet any complaint about the working of the Municipal Regulation. This may perhaps be due to the fact that this provision was brought into force only recently. At any rate, no Council, nor any person concerned, has brought to the notice of Government that there is any hardship in it. I, therefore, thought that there could be no objection in adopting this in the Tolls Recovery Regulation Amendment Bill. Further, when you put in any penal clause, it is necessary that the wording should be the same as the one in a similar Regulation, as otherwise a difference of intention is likely to be attributed to the Legislature. It is this particular view-point that induced me to adopt the wording in the existing Municipal Regulation to which no objection was taken at any time—not even when the Municipal Regulation was finally revised. Therefore, I presumed that it would be acceptable to the House.

Secondly, with reference to costs of prosecution, even there I beg to join issue with Mr. P. K. Narayana Pillai; for, if a person wilfully goes off without paying the toll, the Government, or strictly speaking, in this case, the lessee, is driven to the necessity of accepting the

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toll of a few annas after incurring a loss of more than Rs. 5 or Rs. 10. That aspect of the case has very carefully to be borne in mind. If Mr. P. K. Narayana Pillai's contention is pursued to its logical conclusion the result will be that, under the Municipal Regulation, for every prosecution, the Council will get only the penalty and not the costs of that prosecution. Under these circumstances a Municipal Council will naturally refuse to go the extent of prosecuting a man who has wilfully evaded payment of toll. That is a serious matter. These are the main grounds on which that particular portion of the clause relating to costs of prosecution depends. If Mr. Narayana Pillai's amendment is acceptable, we may adopt the same thing in the Municipal Regulation also. I see that there are Presidents and Municipal Councillors here. So far as Government are concerned, they may not be affected, but in the present case it is the licensee that will suffer and it is a matter for consideration by the House.

DEPUTY PRESIDENT: You say that the wording has been adopted from the Municipal Regulation and that it provides for costs of prosecution?

MR. V. SUBBA AIYAR: This is exactly the wording in that Regulation, without even a coma omitted.

DEPUTY PRESIDENT: Is there any member who wishes to speak?

MR. JOSEPH PANJIKARAN: Sir, after listening to the argument of Mr. Subba Aiyar, I am not at all satisfied that the Section ought to be recast. The only argument that was advanced was that, because such a provision obtains in the Municipal Regulation, it should find a place here, also, as if the Municipal Regulation was the final appeal in this matter. Most probably such a provision was allowed to creep into the Municipal Regulation without sufficient advertence to the importance of the provision that was made; that is no reason whatever why a repetition of it should be made in the Tolls Recovery Regulation. It would cause hardship. Because there is a provision in one Regulation, it is not sound logic to say that that provision should be inserted in the other Regulation also.

The argument of my friend, Mr. P. K. Narayana Pillai, has not at all been touched upon. His argument as to mutuality and reciprocity, his argument that the costs might be enormous—these have not at all been touched upon. Mr. Subba Aiyar only bases his amendment on the Municipal Regulation. As such, I support Mr. P. K. Narayana Pillai.

MR. T. K. VELU PILLAI: Sir, I was one of the members of the Select Committee that sat on this Bill. I am glad to say that, although at the time we considered this Bill certain arguments did not commend themselves to us. Mr. P. K. Narayana Pillai's observations make it imperative that we should consider them.

MR. K. P. RAMAN PILLAI: Hear, hear.

MR. T. K. VELU PILLAI: And I must take this opportunity of publicly thanking him for placing these points before this Council.

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[Mr. N. Ramakrishna Pillai.]

I do not agree with Mr. Narayana Pillai in all his suggestions; but I agree with him in the view that there should be reciprocity between the two parties. If the position of the accused who loses is to make good the costs of prosecution to the prosecutor, it follows logically that the prosecutor, if the prosecution fails, should make good costs to the accused.

Regarding the necessity of this provision I have to observe that respect for law is a most important thing; and this Council cannot treat that subject lightly. We know there are some people who, as soon as they take their seat in a motor-car, think that they can override the law and they do not care for those persons who may ask them to stop even for a moment. To enable any one to ride rough-shod over law like this is certainly not a matter on which we could congratulate ourselves. We must put respect for the law into the heads of people who are prone to violate its commands. What I would, therefore, urge for the consideration of this Council is that the liability to pay the costs may be made reciprocal.

DEPUTY PRESIDENT: That is not before the House.

MR. T. K. VELU PILLAI: I put it as a suggestion.

DEPUTY PRESIDENT: If you put it forward as an amendment I am prepared to give you permission to move it. But, for the present please confine your observations to the amendment which Mr. P. K. Narayana Pillai has proposed. Yours must be a distinct proposition. Mr. P. K. Narayana Pillai wants that that portion should be omitted; you want to retain that portion and add another by which you make the prosecution responsible for the costs in the event of the case being thrown out.

MR. T. K. VELU PILLAI: That is my position. My friend, Mr. P. K. Narayana Pillai, might probably change his views after hearing me, in the same way as I accepted his views after hearing him, so that we may meet together on common ground. It is with that view that I stood up to speak. I put a joint proposition.

DEPUTY PRESIDENT: I am prepared to allow your amendment, if you move it formally.

MR. N. RAMAKRISHNA PILLAI: Sir, the mere fact that a provision for payment of costs of prosecution was introduced in the Municipal Regulation is, I think, not at all a reason for perpetuating and continuing a bad law. The provision for payment of the costs of prosecution is certainly bad law. It is not countenanced by any court in any civilised country. The costs are considered to be remote and not ascertainable in such cases, and, on principle, therefore, courts have invariably discouraged all claims to get the expenses incurred on account of prosecutions. Under these circumstances, it is certainly surprising to see that such a provision was introduced in the Municipal Regulation and also in this piece of legislation now before the House. I also submit that there is no reason why costs of prosecution

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alone should be provided for and not the costs incurred by the successful accused.

DEPUTY PRESIDENT: I think you had better reserve your remarks relating to that until Mr. Velu Pillai brings forward his amendment.

MR. N. RAMAKRISHNA PILLAI: Mr. Velu Pillai does not bring forward an amendment; he has offered only a suggestion.

My view, therefore, is that it is dangerous and bad on principle to introduce any provision for the payment of the expenses of a prosecution under the Regulation. I object to the original amendment proposed and I support my learned friend, Mr. P. K. Narayana Pillai.

MR. T. K. VELU PILLAI: Sir, my amendment to the Section is as follows:

"5A. If any person shall, with any carriage or animal, go off or pass any tollgate or station at which tolls are authorised to be collected with intent to evade the payment of any toll, such person shall be liable to a fine not exceeding fifty rupees and shall also pay the amount of the toll and costs of prosecution, *and if the prosecution fails the prosecutor shall pay the costs of the accused.*"

DEPUTY PRESIDENT: Does anybody second it?

The amendment fell through for want of seconding.

MR. A. HOOGEWERF: Sir, we are coming to an age when we have taxes to the right of us, taxes to the left of us, tolls at the front of us and the Police at the back of us. I, therefore, think that all these Regulations and their application must be made as lenient as possible. Otherwise, life will not be worth living in our "Land of Charity." I, therefore, fully support Mr. P. K. Narayana Pillai's amendment that this portion as regards costs of prosecution should be deleted from the Section.

MR. DOMINIC TOMMAN: Sir, I fully support the amendment of Mr. P. K. Narayana Pillai. If a man who travels in a motor-car for the mere pleasure of violating the law is fined to an extent of Rs. 50, that is not a big sum for a rich man. As Mr. P. K. Narayana Pillai observed, there is no prohibition or limit to the extent of costs of prosecution. So it is quite unjustifiable to saddle an accused person, even if he is convicted by the court, with costs of prosecution.

MR. K. PARAMESVARAN PILLAI: I have great pleasure in supporting the amendment proposed by Mr. P. K. Narayana Pillai. The only argument advanced on the other side is that it is in the Municipal Regulation, and that, for the sake of consistency, it should be also introduced into this. That a wrong exists in one piece of legislation is no argument for perpetuating it in another. Probably at the time when the Municipal Regulation was discussed, this matter was not noticed either by the members of the Select Committee or by the Legislative Council. Now that it has been discovered, I should have thought that the learned Law Member would have asked for the amendment of the Municipal Regulation rather than insist upon the perpetuation of it in this Regulation.

The Tolls Recovery Regulation is, after all, a fiscal enactment and the evasion of it involves no moral turpitude. There was

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[Mr. P. K. Narayana Pillai.]

a time when defaulters of Government revenue used to be punished with huge boulders placed on their backs and the unfortunate victims had to bear the load and stand exposed to the hot sun until it pleased their persecutors to relieve them. Those days are long past and I hope that even the Law Member would not like to have such a barbarous system resuscitated. It is not proper to punish a man with the costs of a prosecution when he is successfully prosecuted for evading the law. It is enough that he is punished in the ordinary way when prosecuted.

After all, the costs actually incurred by the prosecutor may amount to little, but, when formally taxed, it may amount to a very big sum. No other Regulation provides for such a double punishment of the offender even where the offence is very heinous and involves grave moral turpitude. I also submit that the Magistrate has got the power of awarding a portion of the fine imposed as compensation to the prosecutor and that is quite sufficient to meet the ends of justice. I think that under these circumstances the amendment will commend itself to the Council.

MR. V. SUBBA AIYAR: Without any further discussion on the matter I may say that I distinctly said that it was not in the interest of this Government that this provision was put in. It is the *licensee* that has to prosecute and it was to defray his cost that the provision was inserted. But inasmuch as objection is taken by the members on the other side, I have not the slightest objection to accept the amendment and to throw the licensee overboard.

DEPUTY PRESIDENT: So the question before the House is that the words "and costs of prosecution" be omitted.

The motion was carried.

DEPUTY PRESIDENT: MR. P. K. Narayana Pillai, you may now move the second part of your amendment.

MR. P. K. NARAYANA PILLAI: Sir, the second head of my amendment is what I intend as a safeguard by the addition of a proviso

DEPUTY PRESIDENT: You may proceed with the proviso. It runs as follows:

"Provided the establishment of such tollgate or station has been previously notified in our Government Gazette."

MR. P. K. NARAYANA PILLAI: That is the second head of my amendment. Now the establishment of a tollgate under the Tolls Recovery Regulation need not be published in the Government Gazette as the law stands at present; that is what the Regulation indicates. With respect to this particular point, the case law upon the subject is very scanty. All the same, there is a very old case reported in 22, *Weekly Reporter*, Criminal Section, 76, decided by Markby and Mitter. The case arose under the Tolls Act in British India in connection with a question different from the matter we are considering. There the question of the establishment of a tollgate at a particular point on the road had to be determined. Whether the tollgate existed at the particular

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point of the road in question was one of the issues in the case. All that the party seeking to make out the existence of the tollgate against his adversary in that case could produce by way of proof consisted of two letters written by an Under Secretary to Government. Mr. Justice Markby observed in effect that it was quite insecure that the public who were bound to regulate their conduct with respect to the payment of tolls should be referred to two cryptic letters from the Under Secretary's office as proof on the question of the establishment of a tollgate, and that they stood the chance of being subjected to hardship, in the absence of information with respect to the existence of such letters. Here is a situation which calls for some attention and consideration. As I pointed out at the commencement of my argument, the proposed amendment by the Law Member goes beyond the law in British India, and brings into existence a new penalty. It authorises a prosecution which is not a light matter. So I would submit that, whatever be the existing penalty that may be enforced by the seizure of the animals and carts of the person who is not prepared to pay the toll when it comes to a question of prosecution, the establishment of the toll must be above dispute, and it should not rest on slippery grounds. Hence I press that, when it comes to a question of such a serious thing as the prosecution of a person for the disobedience of the toll rules, the establishment of the tollgate itself must be notified to the public. So I am suggesting that the establishment of any particular tollgate, at which the resistance to or evasion of law leading to a prosecution takes place under the Regulation, must be a matter which must have already been published in the Government Gazette. Otherwise, to call upon a person that he should take note of official correspondence or the contents of an agreement between a private lessee and the Government regarding a particular tollstation would lead to serious hardship and insecurity, so far as the general public are concerned. You are introducing a new offence. Why not also provide the necessary safeguards for the subjects of the State? Hence I say that, before you can prosecute a person, the existence of the tollgate must be a fact which the whole public should be aware of. The public should know that such and such a tollgate has been established at such and such a point on the road. That is the second part of the amendment which I introduce as a proviso to safeguard the interests of the public.

MR. S. KRISHNA AIYAR: I second this amendment.

MR. V. SUBBA AIYAR: Sir, my friend, Mr. P. K. Narayana Pillai, need not be under the apprehension that one fine morning a tollgate will appear in a particular place and people will be prosecuted. It is a matter known to everybody that no toll is ever levied before the establishment of a toll gate at a particular place is published in the Gazette. The object of the law is not that the tollgate should be brought into existence secretly. Section 7 of the Regulation distinctly shows that a table of the toll rates should be hung up at the tollgate. To my mind, it appears that there is no difference of opinion as far as that

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[Mr. P. K. Narayana Pillai.]

is concerned. The provision in the Regulation is ample. But, if my friend is not satisfied, by all means let him have it formally proved by the prosecution.

DEPUTY PRESIDENT: I take it that the House agrees to this amendment, *viz.*, that the following proviso be added:

"Provided the establishment of such tollgate or station has been previously notified in Our Government Gazette".

The motion was agreed to.

DEPUTY PRESIDENT: MR. P. K. Narayana Pillai, do you now press the recasting of the Section?

MR. P. K. NARAYANA PILLAI: Certainly.

DEPUTY PRESIDENT: Then you may move that.

MR. P. K. NARAYANA PILLAI: The third head of my objection necessitates a recasting of the residue of the new Section after the parts that have already been allowed to be omitted are dropped. The Section as now amended by the Select Committee reads as follows:

"5 *A*. If any person shall, with any carriage or animal, go off or pass any tollgate or station at which tolls are authorised to be collected with intent to evade the payment of any toll, such person shall be liable to a fine not exceeding fifty rupees and shall also pay the amount of the toll."

I do not quite understand the meaning of a person "going off" a toll gate. It may mean anything. That is the first difficulty there. Then if that expression is intended to cover the case of a deviation from the tollgate with the object of evading the payment of toll at that particular station, I say the law, as intended to be laid down, calls for opposition. For, in the case referred to, *i. e.*, 22, *Weekly Reporter*, Mr. Justice Markby again observes that a toll has to be paid only at the tollbar or tollgate, established under the orders of Government. If the tollgate or tollbar is so situated as to enable any person to evade the payment of toll, the tollgate keeper has to thank himself for selecting such a point for making the demand. Any person is at liberty to use any particular way. The language appears to me to be somewhat infelicitous. If by "going off a toll gate" it is intended to prevent a deviation from the particular point of the road at which the tollgate is established, then I say no person is liable to punishment at all. Why not a person take any way he likes? Why not he be allowed to take any way open to him on any route?

DEPUTY PRESIDENT: That is not what is intended. That cannot be the intention, I think.

MR. P. K. NARAYANA PILLAI: If it is not deviation that is intended, I do not understand what is the intention. My contention is that the toll is payable only at a particular point on the road. The toll is paid on account of the fact that people generally make use of a

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public road maintained by Government; that is the reason for the collection of a toll. But if the toll is made leviable at any point on the road irrespective of the tollgate, the law creates a piece of ductile and elastic nuisance, liable to get elongated in the hands of toll-collectors. For he may stop any carriage at any point of the road. So my contention is that the law should be specific on that subject; only at the particular point of the road where the tollgate is established can any demand be made upon any passenger for the toll which is due from him.

DEPUTY PRESIDENT: If one drives off the gate without giving him the toll, do you say that he ought not to be prosecuted?

MR. P. K. NARAYANA PILLAI: That idea may be expressed in more felicitous language than the language contained in the Select Committee's Report. Hence I recast the whole and make the law clear by the last head of amendment, to the following effect:

"5A. Whoever, being bound to pay any toll in respect of any animal or carriage being taken or conducted by him, refuses to pay the toll demanded of him and wilfully passes or proceeds beyond the tollgate or station at which such demand is made, shall be liable on conviction before a Magistrate to a fine not exceeding rupees fifty and shall also pay the amount of the toll."

That, I think, will make specific the meaning of the Section instead of "going off" the tollgate, which might imply a deviation and expose one to prosecution under the Regulation. It is for that object that I recast the whole and render the language more lucid.

DEPUTY PRESIDENT: Your amendment assumes that the toll-contractor should demand the toll; for, you say "refuses to pay the toll *demanded* of him and wilfully passes or proceeds."

MR. P. K. NARAYANA PILLAI: Certainly, he must demand the toll. If he does not make the demand, he takes the consequence. It is only the wilful "passage" without paying the toll-collector that I would penalise. Suppose the toll-collector is asleep at night and a man with a carrige has to proceed. What is the passenger to do? Or, say the toll-contractor is absent at the station and a person has to pass along. In such cases it is certainly a hardship to punish the passenger. There must be a demand made by the toll-gatherer on a passenger. If the toll is demanded and the person wilfully refuses the payment, then, of course, the statute may be invoked against him. Not otherwise. That is the effect of this recasting that I have placed before the House.

DEPUTY PRESIDENT: Do you attach any special significance to the word "wilful"?

MR. P. K. NARAYANA PILLAI: Any appropriate word may be used.

MR. JOSEPH PANJIKARAN: Sir, I wish to have an explanation from Mr. P. K. Narayana Pillai regarding the word "demand." If a

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[Mr. V. Subba Aiyar.]

motor-car passes, the toll-keeper has scarcely any time to make a demand. The car might fly off at such a rapid speed. There must be some time for the toll-keeper to "demand the toll," as laid down here.

MR. P. K. NARAYANA PILLAI: They have got a barrier across the road, to prevent such escape.

MR. JOSEPH PANJIKARAN: Does that mean that barriers should always be put up?

MR. P. K. NARAYANA PILLAI: I have no objection to bring in such furious drivers under the proposed Section.

DEPUTY PRESIDENT: Who supports Mr. P. K. Narayana Pillai?

MR. J. JOHN NIDIRY: I support him. The language, as it is amended by the Select Committee, is not very clear.

MR. V. SUBBA AIYAR: Sir, I am sorry I cannot accede to Mr. P. K. Narayana Pillai's amendment in this particular matter, because the language is as clear as it can be. I do not think any court would be so unreasonable as to say that, if you want to go to the beach, and a tollgate is near Kalpalakkadavu, you cannot go by Chakkai.

At a tollgate, two posts are erected, and a bar, which is generally a bamboo 30 to 40 feet long, is placed across the road. A man instead of coming along the road drives his cart 5 or 10 feet off from the edge of the road with a view to evade payment. The question is whether such a man should be punished or not. It is perfectly clear that that man deserves punishment. In other words, there must not be a wilful evasion of the payment of toll. A man may drive by any other road; nobody has any objection to it. But, if he goes up near the tollbar and diverts the cart by 5 or 6 feet, that is certainly an offence. Then again, to insist on a refusal to pay after a demand is made is not desirable under the existing state of affairs. My friend, Mr. P. K. Narayana Pillai, then said that there is a bar across the road and only when it is removed can the car pass along. But as I have said in the Statement of Objects and Reasons, the chief object of the present amendment was that some of the buses drove past the tollgate without paying the toll, and the bar cannot be of any help as, when the bar is removed to permit a vehicle to pass, a motor vehicle can pass along it. Therefore, demanding in the first instance and refusing in the second instance—both cannot go together and it may not be possible to secure both these in the present state of motor traffic. Therefore, it is absolutely necessary that wilful evasion should in all cases be made punishable.

Secondly, as I said at the outset, the penal portion should have the same wording in both the Regulations. Otherwise it is liable to be construed one way in this Regulation and differently in the Municipal Regulation. For these reasons, I have to oppose this amendment.

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MR. L. C. HODGSON: Sir, may I rise to a point of language?

MR. V. SUBBA AIYAR: In many cases, it might be that the language could be made better. But in all legislative enactments as far as possible we should keep to the same wording so that an alteration in the wording might not be interpreted differently and different results might not follow. The only reason that guided the drafting of the present amendment was consistency. Motives which were never dreamt of by the legislature would be imported into it, if the language was changed.

MR. A. HOOGEWERF: May I request Mr. Subba Aiyar to make the meaning of "go off" clearer by altering the wording? Every legislative enactment should be clearly worded. The Legislative Council must make the words clear and not leave it to the tender mercies of the court to interpret the law as it likes. I think that Mr. P. K. Narayana Pillai's amendment is correct.

MR. L. C. HODGSON: Sir, may I request Mr. Subba Aiyar to substitute "proceed beyond" instead of "go off." And, again, I would like to substitute "the collection of tolls is authorised," for "tolls are authorised to be collected." Tolls are not human beings. Here it is a personification of tolls—authorising them to collect tolls. It reminds me of the letter I received from an Inspector of Schools. He wrote that a ceiling might be asked to be provided. So tolls may be authorised to be collected. (*Laughter.*) I would suggest the wording "the collection of tolls is authorised."

MR. K. P. RAMAN PILLAI: The discussion on this motion has taken a very long time. It might be better and more conveniently discussed by the Select Committee. I, therefore, move that this Bill be recommitted to the Select Committee with instructions to submit a fresh report in the light of the amendments of Mr. P. K. Narayana Pillai.

MR. P. K. NARAYANA PILLAI: I agree that the Bill in the light of the amendments already accepted be recommitted to the Select Committee.

MR. V. SUBBA AIYAR: I do not accept that, for these reasons. In the first place, we have accepted two amendments, and there is only one other amendment. I do not think that there is any necessity to refer it to the Select Committee at all, if we dispose of this amendment. Again, I believe, there has been sufficient discussion on the matter. I, therefore, do not think that it should be recommitted to the Select Committee at this stage.

DEPUTY PRESIDENT: Gentlemen, the question is that the Bill be sent back to the Select Committee. I will put it to the vote.

The motion was lost, 12 voting *for* and 14 *against*.

DEPUTY PRESIDENT: Gentlemen, you may now proceed with the discussion of Mr. P. K. Narayana Pillai's amendment.

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[Mr. P. K. Narayana Pillai.]

MR. P. K. NARAYANA PILLAI: Sir, I would suggest the acceptance of Mr. Hodgson's modification in the wording, *viz.*, " pass or proceed beyond" for "go off or pass".

DEPUTY PRESIDENT: Is there any difference between the two?

MR. L. C. HODGSON: "Go off" is slang, and not worth being put in here.

DEPUTY PRESIDENT: Do you accept that, Mr. Subba Aiyar?

MR. V. SUBBA AIYAR: I have no objection.

MR. P. K. NARAYANA PILLAI: As recast by me?

DEPUTY PRESIDENT: As submitted by the Select Committee with the two alterations in the wording.

MR. N. RAMAKRISHNA PILLAI: Sir, I wish to make one observation. The clause, as it stands, appears to me rather elastic. I will give an illustration. A passenger goes off a toll gate. He says that he is not prepared to pay the toll and goes back and proceeds another way. Under this Regulation he evades payment.

DEPUTY PRESIDENT: He does not come under the purview of the criminal law.

MR. V. SUBBA AIYAR: "Goes beyond" means "goes beyond the tollgate".

MR. L. C. HODGSON: If he proceeds through another way, he will come across another tollgate.

MR. JOSEPH PANJIKARAN: Sir, I beg to make one observation regarding this amendment. Suppose a person passes a tollgate and the toll-keeper also pursues him and goes beyond a furlong. Even then if he does not pay the toll, under the Section as it stands, will he not be liable to prosecution? For he "goes off with intent to evade payment." I think, therefore, that the words "and thus evades payment," should also find a place in the amendment, because he commits the crime.

MR. V. SUBBA AIYAR: After going off, what guarantee is there that he would pay?

DEPUTY PRESIDENT: Mr. Panjikaran, you may either speak in support of Mr. P. K. Narayana Pillai's amending motion or suggest any further amendment to the Section as drafted by the Select Committee. There is no use of talking in a general way.

MR. JOSEPH PANJIKARAN: I stand by the Section as it is.

DEPUTY PRESIDENT: Now, Mr. Subba Aiyar, do you accept Mr. Hodgson's amendment?

MR. V. SUBBA AIYAR: Yes, Sir, I accept Mr. Hodgson's amendment.

MR. L. C. HODGSON: It is purely a verbal alteration.

MR. P. K. NARAYANA PILLAI: I also accept it.

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MR. V. SUBBA AIYAR: The amendment is as follows: Substitute "proceed beyond" for "go off," and, "collection of tolls is authorised" for "tolls are authorised to be collected".

DEPUTY PRESIDENT: The amended section will now run as follows:

"5A. If any person shall, with any carriage or animal, *proceed beyond* or pass any tollgate or station at which *collection of tolls is authorised* with intent to evade the payment of any toll, such person shall be liable to a fine not exceeding fifty rupees and shall also pay the amount of the toll".

MR. L. C. HODGSON: Sir, may I point out that Mr. K. P. Raman Pillai is not in his place? (*Laughter.*)

DEPUTY PRESIDENT: If both of you agree to the motion, it may be placed before the House. But I think the words "with intent to evade the payment of any toll," may also go.

MR. P. K. NARAYANA PILLAI: The toll-gatherer at least must be present on the occasion.

MR. V. SUBBA AIYAR: Otherwise it will not be "intent to evade".

MR. P. K. NARAYANA PILLAI: I would withdraw my recasting portion if that is moved by somebody.

MR. V. SUBBA AIYAR: Mr. Hodgson has put in that amendment.

DEPUTY PRESIDENT: Yes.

MR. DOMINIC TOMMAN: Sir, in connection with this I wish to make an observation. Suppose there is a short-cut. A man leading an animal passes through the short-cut and he proceeds beyond the tollgate, but not through the tollgate. Is he punishable?

DEPUTY PRESIDENT: It will not be a case of passing through the tollgate "with intent to evade payment." I think it would be beyond the purview of the Council. At present we are concerned with the language of the Section as finally amended. It would read as follows:

"5A. If any person shall, with any carriage or animal, *proceed beyond* or pass any toll-gate or station at which *collection of tolls is authorised*, with intent to evade the payment of any toll, such person shall be liable to a fine not exceeding fifty rupees and shall also pay the amount of the toll".

The question is whether the House agrees to that clause being adopted.

It was unanimously accepted.

DEPUTY PRESIDENT: And then, as amended, the whole Section will run thus:

"5A. If any person shall, with any carriage or animal, proceed beyond or pass any toll gate or station at which collection of tolls is authorised, with intent to evade the payment of any toll, such person shall be liable to a fine not exceeding fifty rupees and shall also pay the amount of the toll:

Provided the establishment of such tollgate or station has been previously notified in Our Government Gazette."

I take it that the House agrees to that.

The amendment was carried.

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